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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/803,318

03/18/2004

Donna Sue Davis

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7590 01/26/2007
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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

MAIL DATE

DELIVERY MODE

01/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/803,318	Applicant(s) DAVIS ET AL.	
	Examiner Marc A. Patterson	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 23-35, 37 and 38.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See attached.

ADVISORY ACTION

Acknowledgement of Applicant's Arguments

1. The amendment made in Claim 36 in the After Final Amendment filed January 10, 2007 has not been entered because the amendment raises a new issue. Claim 36, prior to amendment, was not directed to a 'process for making a packaged structure' comprising 'wrapping a package.' The amendment therefore raises issues which would require further search and consideration to be fully considered, and the amendment has therefore not been entered. Even if the amended claim were to be entered, the amended claim would not overcome the prior art of record, because as stated on page 2 of the previous Action, Lind et al disclose a shrink wrap, and therefore disclose a process for making a packaged structure comprising shrinking the film after wrapping with the film.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicants arguments regarding the 35 U.S.C. 103(a) rejection of Claims 23 – 35 and 37 – 38 as being unpatentable over Lind et al (U.S. Patent Publication No. 2001/0003624) in view of Agouri et al (U.S. Patent No. 4,126,648), of record in the previous Action, have been considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 4 of the remarks dated January 10, 2007, that the previous Action states, without further explanation, that it would have been obvious for one of ordinary skill in the art to have provided for a blend comprising 60 – 90 wt% low density polyethylene and 40 – 10 wt% high density polyethylene in Lind et al as taught by Agouri et al; Applicant

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further argues that the statement regarding the thickness of Agouri et al has nothing to do with Lind et al or Agouri et al.

However, explanation is provided for the conclusion that it would have been obvious to provide for the blend of low and high density polyethylene, in the statement that Agouri et al teach that the blend is superior to a film comprising high density polyethylene alone; furthermore, the statement regarding thickness is intended to clarify that one of ordinary skill in the art would have recognized the advantage of providing for the blend of the film of Agouri et al in Lind et al.

Applicant also argues, on page 5, that Agouri et al teach a blend comprising 50 – 95 wt% low density polyethylene and 50 to 5 wt% high density polyethylene and/or polypropylene, and therefore do not disclose a blend comprising 60 – 90 wt% low density polyethylene and 40 – 10 wt% high density polyethylene.

However, the blend taught by Agouri et al clearly overlaps, in its components and weight ranges, with the claimed blend, and therefore discloses the claimed blend.

Applicant also argues, on page 6, that no reference is made in Lind et al to a film comprising only high density polyethylene; the motivation of superior performance over high density polyethylene, Applicant argues, is therefore not sufficient motivation.

However, in paragraph 0013, Lind et al disclose, as choices of components for the disclosed film, high density polyethylene alone or high density polyethylene and low density polyethylene; furthermore, Agouri et al also teach the use of the blend in the making of a film for bags (column 1, line 14), which is the use of the film disclosed by Lind et al.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 1/24/07
Marc A. Patterson, PhD.
Primary Examiner
Art Unit 1772